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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,087	01/03/2002	John Jiin Chung Yang	USP1610A-CTI	7368

7590

07/13/2004

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EXAMINER
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PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/038,087

Applicant(s)

CHUNG YANG, JOHN JIIN

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed 10-29-2003 have been fully considered but they are not persuasive.

Applicant's statement that "A person having ordinary skill in the art is able to easily make the slot or the cut-out at the sidewall of the pusher button (35) in order to incorporate with the safety arrangement (40) is acknowledged. The examiner's position is however unchanged. It appears the applicant has agreed to the examiners suggestion that structure "such as a slot or cut-out" was not disclosed or illustrate in the application as originally filed. This however does not remedy any deficiencies present in the application as originally filed. The examiner maintains the position that the application as originally filed lacks subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

As stated in the previous office action: While applicant has added further description of the structure already shown in the drawing figures, it remains unclear however, as stated in the previous office action:

"how the pusher button (35) is necessarily capable of being translated relative to the stopper (433) to permit the stopper (433) to be orientation within the pusher button locking cavity (351). Since the outer switch member (431), connected to the stopper through housing slot (37), would necessarily engage any portion of the lower wall edge (**illustrated as a line extending between the right and left hatched end walls of the pusher button as seen in Figures 3D-3F**), it

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is unclear how the pusher button would necessarily be moved a distance sufficient to permit orientation of the stopper in the **within the pusher button locking cavity (351)**. Applicant has not disclosed structure to prevent the continuous **sidewall of the pusher button from engaging the outer switch member**. It appears applicant has failed to illustrate means, such as a **slot or cut-out, in the push button sidewall for receiving** the portion (not illustrated) of the outer switch member (431) extending through the slot (37), into the housing internal cavity (211) and connected to the stopper (433).”.

In order to further define the claimed invention over the prior art of JP ‘030 (Japanese 06-18030) in view of in view of the teaching of Fairbanks et al (U.S. Patent No.- 6077069), and Saito (U.S. Patent No. - 5437549) in view of Fairbanks et al (U.S. Patent No.- 6077069), applicant has amended the claims to be of a scope different than that previously considered. In particular, applicant has further defined the switching member to be “slidably mounted on said lighter housing along said safety slot “ and the stopper is now defined as “extending from said switching member into said lighter housing and is” arranged to normally block up a downward movement of the pusher. The amendments to the claims do not define applicant’s invention over the prior art of record. In this regard, it is noted that each of JP ‘030 (Japanese 06-18030) and Saito (U.S. Patent No. - 5437549) show slots through, or “along”, which switching members are “slidably mounted on said lighter housing”.

In response to applicant's argument that “Fairbanks fails to suggest how to incorporate the piezoelectric spark-producing means with the lighter housing ...”, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any

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one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Fairbanks is relied on for the purpose of providing a teaching that it would have been obvious to a person having ordinary skill in the art to alternatively use piezoelectric spark-producing, or rotatable wheel/flint spark-producing, arrangement to produce sparks in a selectively actuable safety lighter.

The examiner's position that the claims are obvious over the combination of teachings present in the prior art of JP '030 (Japanese 06-18030) in view of the teaching of Fairbanks et al (U.S. Patent No.- 6077069), and Saito (U.S. Patent No. - 5437549) in view of Fairbanks et al (U.S. Patent No.- 6077069), is unchanged and restated herein below.

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Applicant has present no remarks directed to the rejection of claims 1-5 and 7-16 under 35 U.S.C. 103(a) as being unpatentable over Cirami (U.S. Patent No. - 4830603) in view of Fairbanks et al (U.S. Patent No.- 6077069).

The newly discovered prior art reference of JP '749 (JP 56-32749) is brought to applicant's attention. JP '749 shows a switching member (21) slidably arranged along a slot (24) in gas lighter housing, a stopper (19) and a resilient element (23).

#### **Claims 17-20**

The amendments to the claims, in response filed on 12-29-2003, fails to include, or address the status of, claims 17-20 which where previously withdrawn from consideration. Applicant is again requested to confirm the status of these claims.

#### **Claim Rejections - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Figures 3A-3F schematically illustrate the relative movement of the pusher button (35) and locking member (43) during operation of the lighter from a locked condition to an unlocked condition, respectively. While it is clear the stopper (433) is moved, by a outer switch member (431) attached thereto, to various positions relative to the stop post (41) and guider latch (42) to achieve the various operating conditions (433) (shown in Figures 3D-3F), it is unclear how the pusher button (35) is necessarily capable of being translated relative to the stopper (433) to permit the stopper (433) to be orientation within the pusher button locking cavity (351). Since the outer switch member (431), connected to the stopper through housing slot (37), would necessarily engage any portion of the lower wall edge (illustrated as a line extending between the right and left hatched end walls of the pusher button as seen in Figures 3D-3F), it is unclear how the pusher button would necessarily be moved a distance sufficient to permit orientation of the stopper in the within the pusher button locking cavity (351). Applicant has not disclosed structure to prevent the continuous sidewall of the pusher button from engaging the outer switch member. It appears applicant has failed to illustrate means, such as a slot or cut-out, in the push button sidewall for receiving the portion (not illustrated) of the outer switch member (431) extending through the slot (37), into the housing internal cavity (211) and connected to the stopper (433).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1,4,5,7,9 and 13: rejected under 35 U.S.C. 103**

Claims 1,4,5,7,9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '030 (Japanese 06-18030) in view of in view of Fairbanks et al (U.S. Patent No.- 6077069).

JP '030 shows (figure 2) a gas lighter including a spring biased locking member (19) extending through a safety slot (not referenced) in the lighter housing (21) and having a stopper (23) for blocking downward movement of a pusher button (6) by engaging a stop post (17) extending from a bottom of a top wall (6c) of the pusher button (6c). Operation of the gas lighter is permitted when the locking member is moved out of engagement with the stop post and into a cavity (not referenced), by operation of a driver member (22) attached to the locking member and externally located of the slot.

Fairbanks et al (U.S. Patent No.- 6077069) teaches, from the same selectively actuatable lighter field of endeavor as JP '030, alternatively using piezoelectric spark-producing or rotatable wheel/flint spark-producing means for producing sparks in a selectively actuatable lighter.

Fairbanks et al (U.S. Patent No.- 6077069) discloses:

“The means for selectively producing sparks preferably comprises flint material and a rotatable spark-producing wheel having a toothed surface positioned and arranged to selectively frictionally contact the flint material. **Alternatively**, the means for selectively producing sparks may comprise electric spark-producing means and more specifically, (22) piezoelectric spark-producing means. “



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In regard to claims 1,4,5,7,9 and 13, for the same purpose of providing suitable means for producing flame producing sparks, it would have been obvious to a person having ordinary skill in the art to substitute a piezoelectric spark means for the rotatable wheel/flint spark means of JP '030, in view of the teaching of Fairbanks et al.

**Claims 1-5,7-11,13 and 14: rejected under 35 U.S.C. 103**

Claims 1-5, 7-10,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito (U.S. Patent No. - 5437549) in view of Fairbanks et al (U.S. Patent No.- 6077069).

Saito shows a gas lighter including a spring biased locking member (6) extending through a safety slot (31) in the lighter housing (3) and having a stopper (62) for blocking downward movement of a pusher button (5) by engaging a stop post (53) extending from a bottom of a top wall of the pusher button (54). Operation of the gas lighter is permitted when the locking member is moved out of engagement with the stop post and into a cavity (54), by operation of a driver member (61) attached to the locking member and externally located of the slot. A member (55) is spaced from and parallel to the post (53) to define a slot for receiving the stopper (62) there between. The member (55) is deemed the structural equivalent to applicant's broadly claimed "guider latch" which is assigned no particular shape or form and therefore does not distinguish the claimed invention over the prior art member (55).

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Fairbanks et al (U.S. Patent No.- 6077069) teaches, from the same selectively actuatable lighter field of endeavor as JP '030, alternatively using piezoelectric spark-producing or rotatable wheel/flint spark-producing means for producing sparks in a selectively actuatable lighter.

In regard to claims 1-5, 7-10,13 and 14 for the same purpose of providing suitable means for producing flame producing sparks, it would have been obvious to a person having ordinary skill in the art to substitute a piezoelectric spark means for the rotatable wheel/flint spark means of Saito, in view of the teaching of Fairbanks et al.

**Claims 1-5,7-16: rejected under 35 U.S.C. 103**

Claims 1-5 and 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cirami (U.S. Patent No. - 4830603) in view of Fairbanks et al (U.S. Patent No.- 6077069).

Cirami shows a gas lighter including a spring biased locking member extending through a safety slot (61) in the lighter housing (15) and having a stopper (59,60) for blocking downward movement of a pusher button (31) by engaging a stop post (64) extending from a bottom of a top wall of the pusher button (31). Operation of the gas lighter is permitted when the locking member is moved out of engagement with the stop post (64) and into a cavity (78), by operation of a driver member (39) attached to the locking member and externally located of the slot (61). A guider latch (70,71,74,75) is spaced from and parallel to the post (64) to define a slot (72) for receiving the stopper (59,60) there between. The guider latch (figure 4) includes a taper/slanting surface (75)

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extending toward the stop post and arranged to bias the top of the stopper for providing forcing he stopper against a side wall (73) of the stop post (64).

Fairbanks et al (U.S. Patent No.- 6077069) teaches, from the same selectively actuable lighter field of endeavor as JP '030, alternatively using piezoelectric spark-producing or rotatable wheel/flint spark-producing means for producing sparks in a selectively actuable lighter.

In regard to claims 1-5 and 7-16, for the same purpose of providing suitable means for producing flame producing sparks, it would have been obvious to a person having ordinary skill in the art to substitute a piezoelectric ignition means for the rotatably wheel/flint spark means of Cirami, in view of the teaching of Fairbanks et al.

### **Conclusion**

See the attaché PTO form 892 for prior art made of record and not relied upon that is considered pertinent to applicant's disclosure.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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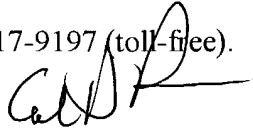
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CARL D. PRICE  
Primary Examiner  
Art Unit 3749

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